REMARKS

The present Amendment cancels claims 1-16 and adds new claims 17-25. Therefore, the present application has pending claims 17-25.

35 U.S.C. §112 Rejections

Claims 12 and 15 stand rejected under 35 U.S.C. §112, second paragraph as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter of the invention. As previously discussed, claims 12 and 15 were canceled. Therefore, this rejection is rendered moot.

35 U.S.C. §102 Rejections

Claims 1, 2, 4-6 and 9-16 stand rejected under 35 U.S.C. §102(b) as being anticipated by U. S. Patent No. 6,487,718 to Rodriguez. As previously discussed, claims 1, 2, 4-6 and 9-16 were canceled. Therefore, this rejection is rendered moot.

35 U.S.C. §103 Rejections

Claim 3 stands rejected under 35 U.S.C. §103(a) as being unpatentable over U. S. Patent No. 6,487,718 to Rodriguez in view of U. S. Patent No. 7,191,435 to Lau. As previously discussed, claim 3 was canceled. Therefore, this rejection is rendered moot.

Claims 7 and 8 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Rodriguez in view of U. S. Patent No. 6,751,794 to McCaleb. As previously, claims 7 and 8 were canceled. Therefore, this rejection is rendered moot.

New Claims 17-25

Claims 17-25 were added to more clearly describe features of the present invention. Specifically, claims 17-25 were added to more clearly recite that the present invention is directed to a system-updating method, a vender computer

system, and a user computer system as recited, for example, in independent claims 17, 20 and 23.

The present invention, as recited in claim 17 and as similarly recited in claims 20 and 23, provides a system-updating method for updating software installed in a user computer system. The method includes acquiring user computer system information including information on hardware employed in the user computer system and information on the software installed in the user computer system. The method also includes constructing a test environment for testing operations of the user computer system based on the acquired user computer system information. The method further includes updating the software in the test environment by using a software-updating patch. Furthermore, the method includes determining whether or not the operations of the user computer system are carried out normally by execution of the updated software in the test environment. Further, the method includes supplying the software-updating patch to the user computer system. The method also includes inserting a code of the software-updating patch into an operating system (OS) running on the user computer system, and inserting a branch code into an obsolete code of the OS in order to branch to the code of the software-updating patch. The prior art does not disclose all of these features.

The above described features of the present invention, as now more clearly recited in the claims, are not taught or suggested by any of the references of record, particularly U.S. Patent No. 6,487,718 to Rodriguez et al. ("Rodriguez"), whether taken individually or in combination with any of the other references of record.

Rodriguez teaches a method and apparatus for installing applications in a distributed data processing system. There is no teaching or suggestion in Rodriguez

of the system-updating method, the vendor computer system, or the user computer system as recited in claims 1, 20 and 23 of the present invention.

Rodriguez discloses a method and apparatus for installing an application on a client computer. An image is created of a selected client computer. The image of the selected client computer is placed on another computer. The application is installed on the other computer, where an update image is created. The updated image is sent back to the client computer. This is quite different from the present invention.

Features of the present invention include: (1) Software update without stopping user's systems; and (2) Construction of test environment in logical partitions. Each of these features is discussed as follows:

(1) Software update without stopping user's systems

An object of the present invention is to provide a software update method for a non-stop system, running 24 hours a day, and 365 days a year, thereby providing high availability. It is rare that such systems stop running, even when the software in the systems is updated. Therefore, to provide this non-stop system, a user system of this invention includes a system updating function 111 in Fig. 7, including a means for applying a patch to a code of an OS itself without restarting the OS. As shown in Fig. 7, the means inserts the new code C20 into the OS 123 and a branch instruction C01 into a location immediately preceding the obsolete code (*see, e.g.,* paragraph [0076] in U.S. Patent Application Publication No. 2005/0071838 of the present application ("US Publication"). Execution of instructions branches from the instruction C01 into the new code C20, shown as an arrow from C01 in Fig. 7.

To the contrary, Rodriguez provides where the system must stop running to update the system (*see, e.g.,* column 7, line 64 to column 8, line 5). Hence, in

Rodriguez, the system must be restarted to update the system. Therefore, the system of Rodriguez cannot maintain high availability.

(2) Construction of test environment in logical partitions

The system of the present invention selects a platform which has a same hardware structure as a user system from platforms in a vendor as a test environment such that a user system is reproduced without fail, and validity of a software update test in the vendor is elevated. Moreover, a vendor system generates a logical partition which is the same as a user system, and uses it as test environment because it is hard to always keep a platform which has a same hardware structure as a user system (*see, e.g.,* Fig. 9; paragraph [0080] of the US Publication; Fig. 10, steps S511-S513; and paragraphs [0082] to [0083] of the US Publication).

To the contrary, with reference to column 7, lines 59-61, Rodriguez fails to teach the construction of a logical partition such as in the present invention. As described in the cited text, the network computer of Rodriguez is selected to have a configuration that is identical to that of the client from which the image was taken. This is not the same as the present invention.

Therefore, Rodriguez fails to teach or suggest "inserting a code of said software-updating patch into an operating system (OS) running on said user computer system, and inserting a branch code into an obsolete code of said OS in order to branch to said code of said software-updating patch" as recited in claim 17, and as similarly recited in claims 20 and 23.

Furthermore, Rodriguez fails to teach or suggest "wherein said step of constructing includes generating said logical partition, which is identical with said user computer system, based on hardware information of said user computer

system information" as recited in claim 19, and as similarly recited in claims 22 and 25.

Therefore, Rodriguez does not teach or suggest the features of the present invention, as recited in claims 17-25. The remaining references of record have been studied. Applicants submit that they do not supply any of the deficiencies noted above with respect to Rodriguez.

In view of the foregoing amendments and remarks, Applicants submit that claims 17-25 are in condition for allowance. Accordingly, early allowance of claims 17-25 is respectfully requested.

To the extent necessary, the applicants petition for an extension of time under 37 CFR 1.136. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, or credit any overpayment of fees, to the deposit account of MATTINGLY, STANGER, MALUR & BRUNDIDGE, P.C., Deposit Account No. 50-1417 (referencing Attorney Docket No. 520.43557X00).

Respectfully submitted,

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